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11 Attorneys for Defendants
12 Merrill Lynch, Pierce, Fenner & Smith
Incorporated and Merrill Lynch & Co., Inc.
13

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 ROBERT J. COFFEY, individually
18 and on behalf of all others similarly
situated,

19 Plaintiff,

20 v.

21 MERRILL LYNCH, PIERCE,
22 FENNER & SMITH
INCORPORATED, and MERRILL
23 LYNCH & CO., INC., and DOES 1-
10,

24 Defendants.
25

Case No. CV11-05860-JFW (JCx)

**STIPULATED PROTECTIVE
ORDER**

[CHANGES MADE BY COURT]

entitlement to file confidential information under seal; Local Civil Rule 79-5 and Paragraph 9 of the Court's Standing Order (Docket No. 3) set forth the procedures that must be followed and reflect the standards that will be applied when a party seeks permission from the Court to file material under seal.

2. **Nondisclosure of Protected Information.** Documents, tangible items, discovery responses, deposition testimony, or other material or media containing confidential information disclosed or produced by any party in this litigation are referred to as "Protected Information." Except as otherwise indicated below, all documents, tangible items, discovery responses, deposition testimony or other information designated by the producing party as "Confidential" and which are disclosed or produced to the attorneys for other parties to this litigation are Protected Information and are entitled to confidential treatment as described below.

3. **Marking of Protected Information.**

Any designation of Protected Information made in accordance with this Protective Order also shall apply to all documents that reproduce, paraphrase, summarize or otherwise contain information from the documents, materials, testimony, and information so designated. Documents, materials, testimony, and information shall be designated as follows:

(a) **Hard Copy and/or Imaged Documents.** Documents containing Protected Information may be designated by any party as "confidential" by marking each page of the document so designated with a stamp stating "CONFIDENTIAL."

(b) **Electronic Documents Produced In Native Form.** To avoid altering documents produced in native form, the producing party shall stamp or label the front of any CD, DVD, or other electronic media containing any group of produced documents with the term "CONFIDENTIAL."

(c) **Non-written materials.** For materials produced in non-written form, the party making the designation shall notify all parties in writing of the designation being made and describe in detail the specific materials that are being designated.

1 In the case of non-written media, such as videotapes, DVDs, hard drives, or
2 computer diskettes, the producing party shall prominently stamp or label the media
3 produced with the term "CONFIDENTIAL."

4 **4. Published Documents.** Protected Information shall not include
5 materials that on their face show they have been published to the public.

6 **5. Declassification.** A party will designate information as "confidential"
7 only if it believes in good faith that it contains Confidential Information. If a party
8 believes that material has been improperly designated as Protected Information
9 subject to this Protective Order, that party's counsel ("Challenging Party") shall so
10 notify, in writing, counsel for the party or other person or entity producing the
11 Protected Information ("Responding Entity"). The Challenging Party and
12 Responding Entity shall then meet and confer in good faith concerning such
13 disputed designation within seven (7) days of receipt of the notice. If the dispute is
14 not resolved by mutual agreement, the Challenging Party may move the Court to
15 remove the confidential designation of the documents or materials produced.
16 Information designated as Protected Information shall remain subject to the terms
17 of this Protective Order pending the Court's determination of any motion for
18 removal such protection. On any such motion the Responding Entity will bear the
19 burden of proof that the Confidential designation in question should not be
20 removed. Aside from the requirement of a 7-day as opposed to a 10-day response
21 deadline to the Challenging Party's notice of the assertedly improper designation,
22 the parties shall otherwise comply with Local Rules 37-1 through 37-4 in seeking a
23 ruling from the Court on any such dispute.

24 **6. Additional Orders.** This Order shall not abrogate any party or other
25 entity's right to refuse to produce Protected Information, or to redact certain
26 portions thereof, upon proper grounds, including without limitation, on the basis of
27 any applicable privilege or statute. Furthermore, any party may also seek further
28 protective orders as they may deem appropriate to safeguard Protected Information.

1 **7. Use of Protected Information.** Protected Information shall not be
2 used or shown, disseminated, copied, or in any way communicated to anyone for
3 any purpose whatsoever, except as provided in Paragraph 8 below. Protected
4 Information shall be used solely for the purpose of preparation and trial of this
5 litigation, and for no other purpose. This prohibition does not prevent a party or
6 entity from using or disclosing information obtained independently of a Responding
7 Entity and does not prevent any party from disclosing any of its own Protected
8 Information to its counsel of record, employees of such counsel, to its experts,
9 consultants and investigators or to the Qualified Persons designated below.

10 **8. Permissible Disclosure of Protected Information.** All Protected
11 Information shall be maintained in confidence and shall not be disclosed, directly or
12 indirectly, to any person or entity, except as provided in this Protective Order.
13 Access to and/or disclosure of information designated as “CONFIDENTIAL” shall
14 be limited to the following individuals (“Qualified Persons”):

15 (a) The parties (or, when the party is not a natural person, their employees
16 or representatives) and counsel of record in this action for the party or parties
17 receiving the Protected Information;

18 (b) Employees of such counsel assigned to and necessary to assist such
19 counsel in the preparation and trial of this action;

20 (c) Witnesses, including expert witnesses (and their staff), and consultants
21 or investigators, who have agreed in writing (in the form attached as Exhibit A) to
22 be bound by this Order, and their counsel, if any, provided such counsel also has
23 agreed in writing (in the form attached as Exhibit A) to be bound by this Order.
24 Those individuals’ written agreements shall be retained by counsel for the non-
25 producing party and furnished to counsel for the producing party when the witness
26 is disclosed in the litigation;

27 (d) Court reporter(s) employed in this action; and

28 (e) The Court, including its employees and the jury.

1 No provision in this section shall be construed as limiting the subpoena
2 power of another court in a separate action. If a Party receives a subpoena
3 requesting documents or information received under this Protective Order from a
4 producing party (other than a subpoena from a regulatory or self-regulatory
5 organization), the party shall promptly notify the producing party so that the
6 producing party may have an opportunity to seek a protective order. Nothing in
7 this Order shall prohibit any party from responding to any inquiry by any self-
8 regulatory organization or regulatory or governmental agency.

9 **9. Copies.** The term “copy” as used herein means any photographic,
10 mechanical or computerized copy or reproduction of any document or thing, or any
11 verbatim transcript, in whole or in part, of such document or thing. No person shall
12 make copies, extracts or summaries of Protected Information, except under the
13 supervision of counsel when, in the judgment of counsel, such copies or other
14 papers are necessary for the litigation of this action. Counsel and other persons to
15 whom the Protected Information are disclosed pursuant to Paragraph 8 of this Order
16 shall take all reasonable and appropriate precautions to avoid loss or inadvertent
17 disclosure of such Protected Information.

18 **10. Requirements to File Under Seal; Filing with the Court.** If a party
19 wishes to file with the Court a pleading, motion, memorandum, brief, deposition
20 transcript, discovery request or response, exhibit, or other document that references,
21 paraphrases, summarizes, or otherwise contains any Protected Information, the
22 party filing the materials shall comply fully with all applicable local rules relating
23 to filings under seal including, without limitation, Local Civil Rule 79-5.1, and with
24 Paragraph 9 of the Court’s Standing Order (Docket No. 3) which, among other
25 things, limits the number of documents that may be submitted for filing under seal,
26 details the type of showing which must be made and the procedures which must be
27 followed in seeking to file documents under seal, imposes advance notice and meet
28 and confer obligations upon the parties and imposes requirements regarding

1 courtesy copies of documents authorized to be filed under seal. In accordance with
2 the Standing Order, in the event the Court grants an application to file documents
3 under seal, a redacted version for public viewing, omitting only such portions as the
4 Court has ordered filed under seal shall be promptly filed by the parties after the
5 Court's Order sealing the documents.

6 **11. Depositions.** To the extent that Protected Information is used at
7 depositions, such documents or information shall remain subject to the provisions
8 of this Order, along with the transcript pages of the testimony referring to the
9 Protected Information. Testimony is Protected Information under the terms of this
10 Order only if counsel for a party advises the court reporter and opposing counsel of
11 such designation at the deposition, or by written designation to all parties and the
12 court reporter within fourteen (14) days after receiving the transcript of such
13 deposition or hearing of the specific pages and lines of the transcript (or numbered
14 exhibits) that should be treated as Protected Information thereafter. If the
15 designation is made in writing after the deposition or hearing, each party shall
16 attach a copy of such written notice to the face of the transcript and each copy
17 thereof in his, her or its possession, custody or control.

18 To the extent possible, the court reporter shall identify in the transcript the
19 designation of Protected Information.

20 Disclosure of Protected Information to a witness during a deposition shall not
21 constitute waiver of the designation of such information as Confidential for all
22 other purposes provided herein. Information disclosed at (a) the deposition of a
23 party or one of its present or former officers, directors, employees, agents or
24 independent experts retained by counsel for the purpose of this litigation, or (b) the
25 deposition of a third party may be designated by any party as "Confidential"
26 information by indicating on the record at the deposition that the testimony is
27 "Confidential" and is subject to the provisions of this Order.

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1 **12. Transcripts.** Any court reporter or transcriber who reports or
2 transcribes testimony in this action shall agree that all Protected Information
3 designated as such under this Order shall remain confidential and shall not be
4 disclosed by them, except pursuant to the terms of this Order, and that any notes or
5 transcriptions of such testimony (and any accompanying exhibits) will be retained
6 by the reporter or delivered to counsel of record.

7 **13. Use of Protected Information at Hearing or Trial.** If a party wishes
8 to use or introduce Protected Information at a hearing or trial, that party shall give
9 seven (7) days' notice to the producing party, so that the producing party has a
10 reasonable opportunity to seek further orders from the Court concerning the
11 admissibility, confidentiality, or use of such information at the trial or hearing.

12 **14. Inadvertent Production.** The inadvertent failure to designate
13 Protected Information properly (or at all) in accordance with this Protective Order
14 prior to or at the time of disclosure shall not operate as a waiver of a party's right to
15 thereafter designate such information as confidential within thirty (30) days after
16 such disclosure.

17 Inadvertent production or disclosure of documents or information subject to
18 the attorney-client privilege, work product doctrine or any other applicable
19 privilege or protection from disclosure shall not constitute a waiver of, nor
20 prejudice to, any claim that such or related material is privileged or protected by the
21 work product doctrine or any other applicable privilege or protection from
22 disclosure, provided that the producing party notifies the receiving party in writing
23 promptly after discovery of such inadvertent production. Such inadvertent
24 produced documents or information, including all copies thereof, shall be returned
25 to the producing party immediately upon request. No use shall be made of such
26 documents or information during deposition or at trial, nor shall such documents or
27 information be shown to anyone who has not already been given access to them
28 subsequent to the request that they be returned, provided, however, that receiving

1 party may move the Court for an Order compelling production of such information,
2 but the motion shall not assert as a ground for production the fact of the inadvertent
3 production.

4 **15. Prohibition Against Dissemination.** The party or parties receiving
5 Protected Information shall not under any circumstances share, sell, offer for sale,
6 provide for free or otherwise disseminate, advertise, or publicize Protected
7 Information. This prohibition does not prevent a party from using or disclosing
8 documents or information obtained independently of a responding party.

9 **16. Disposition of Protected Information.** After termination of this
10 litigation, including the exhaustion of appeals, the provisions of this Order shall
11 continue to be binding, except with respect to those documents and information that
12 become a matter of public record through no violation of this Order or fault of any
13 party or entity other than the producing party. Within 90 days after the final
14 conclusion of this Action by settlement, judgment without appeal, or issuance of a
15 mandate by an appellate court, counsel of record for each party shall, upon request,
16 return to the applicable designating party or non-party, or certify to them in writing
17 that it has destroyed, all Protected Information designated by such party or non-
18 party during the course of this Action, including all copies of discovery and all
19 excerpts or summaries thereof or any other materials derived therefrom or referring
20 thereto, except that each counsel of record may maintain a single copy of all
21 pleadings containing such information and except for any documents properly
22 classified as work product.

23 **17. Binding Effect.** Any party designating any person as a Qualified
24 Person shall have the duty to reasonably ensure that such person observes the terms
25 of this Protective Order and shall be responsible upon breach of such duty for the
26 failure of any such person to observe the terms of this Protective Order. This Order
27 shall be binding upon persons executing Exhibit A hereto, the parties, and their
28 respective attorneys, successors, representatives, administrators, heirs, assigns,

1 subsidiaries, divisions, employees, agents, independent contractors, or other rsons
2 or organizations over which they have control.

3 **18. Application for Modification.** Nothing in this Order shall preclude
4 any party from applying to the Court for a modification of the Order.

5 IT IS SO STIPULATED.

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7 Dated: October 11, 2011

RYAN K. BAKHTIARI
AIDIKOFF, UHL & BAKHTIARI

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9
10 _____/s/
Ryan K. Bakhtiari
11 Attorneys for Plaintiff
Robert J. Coffey

12
13 DATED: October 12, 2011

PETER H. MASON
ERIC A. HERZOG
14 FULBRIGHT & JAWORSKI L.L.P.

15
16 _____/s/
17 Peter H. Mason
Attorneys for Defendants
18 Merrill Lynch, Pierce, Fenner & Smith
19 Incorporated and Merrill Lynch & Co.,
Inc.

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22 **IT IS SO ORDERED.**

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24 DATED: November 1, 2011

25 _____/s/
JACQUELINE CHOOLJIAN
26 United States Magistrate Judge
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EXHIBIT A

1 things which I may prepare relating thereto to counsel for the party producing such
2 materials upon receipt of a request to do so at the conclusion of the Action.

3 5. I hereby irrevocably consent to the jurisdiction of the United States
4 District Court for the Central District of California for the purpose of any
5 proceeding to enforce or secure compliance with the terms of this Protective Order,
6 or to punish the breach of any of the terms of this Protective Order. I understand
7 that I may be found in contempt of court if I violate this Agreement.

8 6. I understand and agree that my obligations under this Certification and
9 Agreement and the Protective Order will survive and continue beyond the
10 termination of the Action.

11
12 I declare under penalty of perjury that the foregoing is true and correct.

13
14
15 Dated: _____

16
17 _____
Signature

18
19 _____
Printed Name